

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 20, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP615

Cir. Ct. No. 2009CF298

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WILLIAM WALTER SPEENER,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
REBECCA F. DALLET, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. William Walter Speener, *pro se*, appeals from orders denying his postconviction motions. The issue is whether Speener's arguments are barred by *State v. Escalona-Naranjo*, 185 Wis.2d 168, 185, 517

N.W.2d 157, 164 (1994). We conclude that his arguments are barred. Therefore, we affirm.

¶2 Speener was convicted of one count of failing to register as a sex offender in 2009. He did not file a direct appeal from his conviction. On November 28, 2011, he filed a postconviction motion pursuant to WIS. STAT. § 974.06, arguing that there was insufficient evidence to convict him and that his conviction violated due process. He also argued that he received ineffective assistance from his trial lawyer because his lawyer did not challenge the sufficiency of the evidence or argue that a DNA surcharge should not be imposed. On December 21, 2011, the circuit court vacated the DNA surcharge, but denied Speener's motion in all other respects. Speener did not appeal the order.

¶3 On January 10, 2012, Speener filed a second postconviction motion pursuant to WIS. STAT. § 974.06, arguing that he received ineffective assistance from his lawyer because his lawyer did not adequately research the law on the reporting requirements for homeless sex offender registrants. On January 25, 2012, the circuit court denied his motion because the case on which Speener relied, *State v. Dinkins*, 2012 WI 24, 339 Wis. 2d 78, 810 N.W.2d 787, "was decided after [Speener] entered a guilty plea for failure to register as a sex offender, and therefore, counsel cannot have been ineffective for failing to challenge the complaint based on law that was not then in existence." Speener's appeal of that order is now before us.

¶4 On March 2, 2012, Speener filed a third motion under WIS. STAT. § 974.06, arguing that the sex offender registry statute, WIS. STAT. § 301.45, was unconstitutional and that his plea was invalid because § 301.45 does not address the registration requirements for homeless persons. The circuit court denied the

motion the day it was filed on the grounds that it was procedurally barred by *Escalona-Naranjo*. Speener has also appealed this order.

¶5 A motion brought under WIS. STAT. § 974.06 is barred unless the defendant shows a sufficient reason why he did not, or could not, raise the issues in a prior postconviction motion or on direct appeal. *Escalona-Naranjo*, 185 Wis. 2d at 185, 517 N.W.2d at 164. Speener does not argue that a sufficient reason exists for his failure to raise all of his claims at one time. Instead, he contends that his second and third postconviction motions were allowed by § 974.06 because they were “supplemental” motions. He points to the language of the statute, which provides: “[a]ll grounds for relief available to a person ... must be raised in his or her original, supplemental or amended motion.” § 974.06.

¶6 Speener misunderstands the meaning of the phrase “original, supplemental or amended motion” in the statute. The statute allows the original motion to be supplemented or amended to raise claims while it is pending. An entirely separate motion brought after a previous motion is decided is a *successive* motion. Stated differently, the statute provides that all grounds for relief must be brought in the original motion, which may be supplemented or amended. If we were to read the statute as Speener urges, there would be no end to the number of motions that could be brought. Bringing “successive motions and appeals, which all could have been brought at the same time,” would defeat the purpose of WIS. STAT. § 974.06. *See Escalona-Naranjo*, 185 Wis. 2d at 185, 517 N.W.2d at 164. Speener brought three separate motions in turn, each with distinct claims. He did not raise all grounds for relief in his original motion and he did not provide a sufficient reason for failing to do so. Therefore, Speener’s claims are procedurally barred by *Escalona-Naranjo*.

By the Court.—Orders affirmed.

This opinion will not be published. See WIS. STAT.
RULE 809.23(1)(b)5.

